

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DAWN THOMPSON, on behalf of herself and  
all others similarly situated,

Plaintiff,

v.

WYETH, INC., a/k/a WYETH COMPANY,  
f/k/a AMERICAN HOME PRODUCTS  
CORPORATION; WARNER-LAMBERT  
COMPANY; PARKE-DAVIS, a division of  
Warner-Lambert Company; PFIZER, INC.;  
MCNEIL-PPC, INC.; NOVARTIS  
CORPORATION; NOVARTIS CONSUMER  
HEALTH, INC., RITE-AID CORPORATION;  
PRESTIGE BRANDS, INC.; and THE  
PROCTOR AND GAMBLE COMPANY,

Defendants.

Civil Action No.  
05-11169-DPW

**DEFENDANTS' ASSENTED-TO MOTION TO EXTEND TIME TO ANSWER OR  
OTHERWISE PLEAD IN RESPONSE TO COMPLAINT**

This assented-to Motion is filed by defendants Pfizer Inc. ("Pfizer"), Warner-Lambert Company LLC ("Warner-Lambert"), improperly named as Warner-Lambert Company, on behalf of itself and its unincorporated Parke-Davis division ("Parke-Davis"), Wyeth, Inc., McNeil-PPC, Inc., Novartis Corporation, Prestige Brands, Inc., and The Procter & Gamble Company (collectively "Defendants").

On June 13, 2005, Defendants filed an assented-to motion for an extension of time to and including June 27, 2005 in order to respond to the Complaint of plaintiff Dawn Thompson ("Plaintiff"), which motion was allowed. Defendants respectfully request a further extension of time as set forth below. In support of their assented-to Motion, Defendants state as follows:

1. Plaintiff filed her Complaint in this action on February 11, 2005 in the Superior Court Department of Essex County, Massachusetts.

2. Defendants were served with a summons and copy of the Complaint in or about the first week of May, 2005.

3. Defendants Pfizer, Warner-Lambert and Parke-Davis filed a Notice of Removal with this Court on June 6, 2005.

4. The Complaint alleges, among other things, that Defendants engaged in material misrepresentations in connection with the marketing and sale of various over-the-counter children's cough syrups that contained the active ingredient dextromethorphan.

5. Plaintiff claims, among other things, that Defendants marketed these cough syrups as "effective in suppressing children's coughs" while the cough syrups are "no more effective in children than a placebo." See Complaint at ¶ 2.

6. Because of the complex nature of the issues presented by the Complaint, Defendants, with Plaintiff's assent, moved for an extension of time until June 27, 2005 to answer or otherwise plead pursuant to Fed. R. Civ P. Rule 12. This motion was allowed on June 15, 2005.

7. Plaintiff subsequently informed Defendants of her intent to move to remand this action back to the Superior Court Department of Essex County. Plaintiff has also informed Defendants of her intent to amend the Complaint in order to add a claim against Defendants for violations of G.L. C. 93A.

8. As result, Defendants request a further extension of time to answer or otherwise plead until either thirty (30) days after Plaintiff has filed her amended Complaint *or* until thirty

(30) days after a final decision issues on the Plaintiff's anticipated Motion to Remand, whichever period is *longest*.

9. By and through her counsel, Plaintiff has assented to the extension sought by the Defendants.

10. Such an extension of time will not unnecessarily delay the just and prompt resolution of this action, will conserve judicial resources and may also narrow the issues before this Court.

WHEREFORE, Defendants respectfully request that this Court:

- a. Grant their Motion;
- b. Enter an Order extending the time for Defendants to answer or otherwise plead until either thirty (30) days after Plaintiff has filed her amended Complaint or until thirty (30) days after a final decision issues (by either this Court or the United States Court of Appeals for the First Circuit) on the Plaintiff's Motion to Remand, whichever period is longest; and
- c. Grant such further relief as this Court deems just and appropriate.

- 4 -

ASSENTED TO:

Plaintiff, Dawn Thompson,  
By Her Attorney,

*/s/ Kenneth G. Gilman*

---

Kenneth G. Gilman (BBO #192760)  
Douglas J. Hoffman (BBO #640472)  
GILMAN AND PASTOR, LLP  
Stonehill Corporate Center  
999 Broadway, Suite 500  
Saugus, MA 01906  
Tel. (781) 231-7850  
Fax (781) 231-7840

Respectfully submitted,  
The Defendants,  
By Their Counsel,

*/s/ J. Christopher Allen, Jr.*

---

Joseph J. Leghorn (BBO #292440)  
J. Christopher Allen, Jr. (BBO #648381)  
NIXON PEABODY LLP  
100 Summer Street  
Boston, MA 02110  
Tel. (617) 345-1000  
Fax (617) 345-1300  
Counsel for Defendants,  
Warner-Lambert Company LLC, Parke-Davis,  
and Pfizer Inc.

*/s/ Gabrielle R. Wolohojian*

---

Gabrielle R. Wolohojian (BBO #555704)  
Edward Hale (BBO #651272)  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
60 State Street  
Boston, MA 02109  
Tel. (617) 526-6000  
Fax (617) 526-5000  
Counsel for Defendant, Wyeth, Inc.

*/s/ Rory Fitzpatrick*

---

Rory Fitzpatrick (BBO #169960)  
Andrew C. Glass (BBO #638362)  
Kirkpatrick & Lockhart Nicholson  
Graham LLP  
75 State Street  
Boston, MA 02109  
Tel. (617) 261-3100  
Fax (617) 261-3175  
Counsel for Defendant, Novartis Corporation

*/s/ Joseph F. Shea*

---

Joseph F. Shea (BBO # 555473)  
Nutter McClennan & Fish LLP  
World Trade Center West  
155 Seaport Blvd.  
Boston, MA 02210-2604  
Tel. (617) 439-2000  
Fax (617) 310-9000  
Counsel for Defendant, McNeil-PPC, Inc.

*/s/ Mark Hoover*

---

Mark Hoover, Esq. (BBO #564473)  
Campbell, Campbell, Edwards & Conroy, P.C.  
One Constitution Center  
Third Floor  
Boston, MA 02129  
(617) 241-3000 (p)  
(617) 241-5115 (f)

-and-

David Maron, Esq.  
Robert W. Sauser, Esq.  
Baker, Donelson, Bearman, Caldwell &  
Berkowitz, PC  
1800 Republic Centre  
633 Chestnut Street  
Chattanooga, TN 37450-1800  
Tel. (423) 752-4404  
Fax (423) 752-9567  
Counsel for Defendant, Prestige Brands, Inc.

- 6 -

*/s/ Edwin F. Landers, Jr.*

---

Edwin F. Landers, Jr. (BBO #559360)  
Morrison Mahoney LLP  
250 Summer Street  
Boston, MA 02210  
Tel. (617) 439-7583  
Fax (617) 342-4967

- and -

John E. Hall  
Michael Labson  
Covington & Burling  
1201 Pennsylvania Ave., N.W.  
Washington, DC 20004  
Tel. (202) 662-5104  
Fax (202) 778-5104  
Counsel for Defendant,  
The Procter & Gamble Company

**CERTIFICATE OF SERVICE**

I, J. Christopher Allen, Jr. do hereby certify that a true copy of the above document was served upon all counsel of record by electronic service on this 27<sup>th</sup> day of June, 2005.

*/s/ J. Christopher Allen, Jr.*

---

J. Christopher Allen, Jr.